

[2020] PBRA 100

Application for Reconsideration by Page

Application

1. This is an application by Page (the Applicant) for reconsideration of a decision of a panel, taken on the papers, and dated the 13 May 2020 not to direct release or to recommend a transfer to open prison.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the dossier amounting to 215 pages, the decision letter, the direction dated the 15 June 2020 refusing an oral hearing and the grounds in support of reconsideration.

Background

4. On the 4 April 2003, the Applicant was sentenced for an offence of manslaughter to life imprisonment with a minimum period to serve of nine years before she was eligible for parole.
5. The minimum period expired on the 4 April 2012.
6. The Applicant had been charged with murder but pleaded guilty to manslaughter on the basis of diminished responsibility. The prosecution accepted that plea on psychiatric evidence showing she suffered from a psychopathic disorder.

Request for Reconsideration

7. The application for reconsideration is dated the 2 July 2020.
8. Essentially, the Applicant complains that the panel did not hold an oral hearing and suggests that a number of defects flowing from that decision amount either to irrationality or procedural irregularity.
9. The grounds are as follows:

Irrationality

- (a) The panel wrongly held that the Applicant did not challenge the evidence that she had not engaged with professionals nor completed any offence focused work.
- (b) The decision letter was over simplistic when it said "*whilst the issues in [the Applicant's] case may well be complex what is required to unravel that complexity is for [the Applicant] to accept responsibility for the part [the Applicant has] played in [the Applicant's] predicament*".
- (c) If an oral hearing had taken place, assessments could have been carried out which would have identified the barriers preventing the Applicant from making progress and the most effective way of dealing with them.
- (d) An oral hearing could have examined whether the Applicant was correctly placed in the high security state.
- (e) An oral hearing could have directed further assessments to understand why the Applicant had not engaged with professionals.

Procedural Irregularity

- (f) The panel, in the absence of an oral hearing, failed to gain an understanding of the Applicant and her level of insight.
- (g) The Panel did not place sufficient weight on three areas of factual dispute:
 - (i) an allegation she spat blood at an officer,
 - (ii) an allegation she refused to speak to professionals, and
 - (iii) a safety concern that she was a fire setter.

Current parole review

- 10. On the 16 October 2019, the case was referred to the Parole Board by the Secretary of State to consider whether or not it would be appropriate to direct the Applicant's release or if that was not appropriate to recommend a transfer to open conditions.
- 11. On the 26 March 2020, the Applicant's legal representative filed a written request for an oral hearing.
- 12. On the 13 May 2020, the panel considered the application on the papers.
- 13. On the 15 June 2020, a panel member refused a further application for an oral hearing.

The Relevant Law

- 14. The Panel correctly sets out in its decision letter the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Irrationality



15. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

Procedural unfairness

16. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

Other

17. In the cases of **Osborn v Parole Board [2013] UKSC 61**, the Supreme Court comprehensively reviewed the basis on which the Parole Board should consider applications for an oral hearing. Their conclusions are set out at paragraph 2 of the judgment. The Supreme Court did not decide that there should always be an oral hearing but said there should be if fairness to the prisoner requires one. The Supreme Court indicated that an oral hearing is likely to be necessary where the Board is in any doubt whether to direct one; they should be ordered where there is a dispute on the facts; where the panel needs to see and hear from the prisoner in order to properly assess risk and where it is necessary in order to allow the prisoner to properly put his case. When deciding whether to direct an oral hearing the Board should take into account the prisoner's legitimate interest in being able to participate in a decision with important implications for him. It is not necessary that there should be a realistic prospect of progression for an oral hearing to be directed.

The reply on behalf of the Secretary of State

18. The Secretary of State did not make any representations in response to this application for reconsideration.

Discussion

19. Regardless of the extent to which it is complex or not, this case is a very sad one.
20. The Applicant is not managing certain aspects of her personality and everyone understands how difficult it is for the Applicant to accept that.
21. Tragically, the Applicant committed a killing which the sentencing judge described as brutal and horrific. Given those facts, the cold reality of the Applicant's present situation is that no Parole Board panel can responsibly consider progress without the support of either psychiatric or psychological evidence.



22. An oral hearing took place on the 10 August 2018 at the conclusion of which the Applicant had to remain in close conditions.
23. The decision letter told the Applicant that she needed to *"have a long hard look at [her] situation and start seeing all professionals as key to [her] making progress. If [the Applicant does] not agree to engage with psychologists, [she] will not make progress at [her] next Parole Review"*.
24. Making all allowances for what the Applicant appears to dispute in the dossier, and acknowledging that she really tried at the beginning, the burden of the evidence is that her behaviour, since the last hearing, has been mixed and that after April 2019 she did not engage with the psychologist so there is no up-to-date psychological risk assessment.
25. Without a psychological risk assessment there can be no progress.
26. The Parole Board cannot involve itself in sentence planning: that is a matter for the professionals and in this particular case, the professionals will be guided by a psychological assessment. The Parole Board, moreover, is prohibited from making recommendations about to which category a prisoner should be assigned.
27. In the written request for an oral hearing, the legal representatives acknowledged that the Parole Board cannot become involved in sentence planning.
28. However, Grounds (c), (e) and (f) in fact invite the panel to take on the Applicant's sentencing planning to a greater or lesser extent. This and any recommendation relating to her security category (Ground (d)) would have been impermissible exercises.
29. There is a degree of unreality about the suggestion that an oral hearing would have broken the impasse in progressing the case. The future treatment of a prisoner whose offending is as serious and whose treatment needs are as complex as the Applicant's has to be identified by way of a psychological assessment. The panel simply could not have proceeded without such an assessment.
30. Probably the way forward is for the Applicant to do individual work on engagement and motivation as suggested by her Offender Manager, but that is something between the Applicant and the Offender Manager and cannot be directed by the Parole Board.
31. The Applicant's cooperation would have therefore been a necessary precondition for an effective oral hearing. The factual position is clear: the Applicant had not cooperated with a psychological assessment. Her history includes walking out of a Parole Board oral hearing, having to be restrained and throwing a glass of water at one of the members of the panel.
32. All the information demonstrated the Applicant had not been cooperative, had found listening to people discussing her condition extremely difficult, and was unlikely to be cooperative in the immediate future.



33. As to Grounds (a) and (g), the panel was aware there were factual disputes but that these were limited. There is no evidence the panel attempted to resolve these disputes in the absence of evidence, as opposed to noting their existence.
34. The remainder of the evidence was compelling, namely that because of the Applicant's lack of cooperation (for whatever reason) the panel had not been provided with the essential information with which to identify a way forward.
35. The panel specifically noted the issue of dispute relating to allegations of fire setting and did not take those allegations into account.
36. The decision letter cites **Osborn v Parole Board [2013]** by name although it does not refer to any particular passage in the judgement; however the decision letter sets out comprehensively and with great clarity the reasons why, at this stage, holding an oral hearing would be a futile undertaking.
37. The subsequent direction dated the 15 June 2020 cannot be relied upon as evidence of either irrationality or procedural irregularity in the decision-making process because by that date, the decision had been made and published. The reconsideration process is limited in its jurisdiction by Rules 19(1)(a) or (b), 21(7) or 25(1) Parole Board Rules 2019 see **Hassan [2019] PBRA 36**.
38. The decision letter's observation: "*Whilst the issues in [the Applicant's] case may well be complex what is required to unravel that complexity is for [the Applicant] to accept responsibility for the part [the Applicant has] played in [the Applicant's] predicament*" must not be taken out of context. The decision letter, taken as a whole, deals with all the essential factors, is accurate, balanced and clear. My view is that, within its context, the above sentence, far from being simplistic, is sound advice which the Applicant ought to be encouraged to follow.

Decision

39. For the reasons I have given, I do not consider that the decision was irrational/ procedurally unfair and accordingly the application for reconsideration is refused.

James Orrell
30 July 2020

